

# COMPLIANCE OVERVIEW

Provided by Cowden Associates, Inc.

## Form M-1 for MEWAs and AHPs

Administrators of multiple employer welfare arrangements (MEWAs), including association health plans (AHPs), that offer medical benefits must electronically file the Form M-1 with the Department of Labor (DOL) annually and in connection with certain events.

The Form M-1 is designed to protect consumers against MEWA fraud. It collects information about the MEWA's compliance with certain federal health coverage requirements. It also collects information about individuals and entities that are involved with the MEWA's operations and services.

The annual Form M-1 must be filed no later than **March 1** following the calendar year for which a filing is required. A one-time, 60-day extension of time to file will automatically be granted by the DOL if requested by the MEWA administrator. This extension must be requested no later than the normal due date for the Form M-1.

This Compliance Overview summarizes the Form M-1 filing requirement for MEWAs.

## HIGHLIGHTS

### FILING EVENTS

MEWA administrators must submit a Form M-1 annually (by March 1) and for the following events:

- A new MEWA begins operations (30 days prior)
- An existing MEWA expands operations to an additional state (30 days prior)
- Two or more MEWAs merge (within 30 days)
- The number of covered employees increases by 50 percent or more (within 30 days)
- The MEWA experiences a material change to its custodial or financial information (within 30 days)

### LINKS AND RESOURCES

- [ERISA Reporting Forms and Instructions](#) (including Form M-1)
- DOL's [10 Tips for Filing Form M-1 for AHPs and Other MEWAs That Provide Medical Benefits](#)
- DOL's [final rule](#) on reporting requirements for MEWAs

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

**COWDEN**

444 Liberty Avenue, Suite 605  
Pittsburgh, PA 15222  
Ph: 412.394.9330  
Website: [www.cowdenassociates.com](http://www.cowdenassociates.com)

## MEWAs

A MEWA is any arrangement that offers or provides welfare benefits (for example: health, disability or life insurance benefits) to the employees of **two or more employers that are not part of the same controlled group of businesses**.

A MEWA does not include an arrangement that provides welfare benefits to the employees of two or more employers if it is established or maintained:

- Pursuant to one or more collective bargaining agreements;
- By a rural electric cooperative; or
- By a rural telephone cooperative association.

In most cases, MEWAs are employee welfare benefit plans that are subject to ERISA and other federal employee benefits laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA). States are also allowed to regulate MEWAs under their own insurance laws and regulations.

**Association health plans (AHPs) are a type of MEWA.** Beginning in 2018, a DOL [final rule](#) allows more employers to join together and sponsor AHPs that are treated as single plans under ERISA. When an AHP is treated as a single ERISA plan, all employees covered by the plan are considered when determining the insurance market rules (that is, small group or large group) that apply to the plan. According to the DOL, the rule change provides small employers—many of whom are facing higher premiums and fewer coverage options—with a greater ability to join together and gain many of the regulatory advantages enjoyed by large employers, as well as increased bargaining power.

## FORM M-1

MEWAs that provide **health benefits** (including AHPs) are required to electronically file a [Form M-1](#) with the DOL annually and in connection with certain events. This filing requirement applies regardless of plan size or type of MEWA funding (that is, fully insured or self-insured).

Entities claiming not be MEWAs due the exception for collectively bargained plans, called entities claiming exception (ECEs), must file the Form M-1 for the first three years after the ECE is originated.

### *Information Collected*

The Form M-1 collects information on the MEWA's compliance with certain health coverage requirements under federal law, including HIPAA, the Mental Health Parity and Addiction Equity Act (MHPAEA), the Newborns' and Mothers' Health Protection Act (NMHPA), the Women's Health and Cancer Rights Act (WHCRA), the Genetic Information Nondiscrimination Act (GINA) and certain

mandates under the ACA.

The Form M-1 also collects information about individuals and organizations responsible for:

- Sponsoring or managing operations of MEWAs that offer medical benefits; and
- Providing services—such as benefits administration or actuarial and asset management services—to a MEWA that offers medical care benefits.

According to the DOL, the Form M-1 is a critically important filing that helps both it and state insurance departments protect consumers. A failure to register on time or to file a complete, accurate and timely Form M-1 is a red flag. As a general rule, no one should be marketing, operating, or administering a MEWA that offers medical care benefits, unless it has filed an M-1.



## Compliance Tip

Any business considering enrolling in coverage through an AHP can visit the DOL's website and use the [Form M-1 search tool](#) to determine whether the AHP has appropriately registered with the DOL and made any other required M-1 filings. To search, it helps to know the name of the AHP, the employer identification number (EIN) of the AHP sponsor, and the state(s) in which the AHP operates.

### ***Who Must File***

In general, the administrator of a MEWA that provides medical benefits must file the Form M-1.

A MEWA's administrator is the person designated as the administrator by the terms of the instrument under which the MEWA operates. If a MEWA is a group health plan and its instruments do not designate an administrator, the plan sponsor is the administrator. In the case of a MEWA for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible for the control, disposition, or management of the cash or property received by or contributed to the MEWA.

The following MEWAs are exempt from the Form M-1 filing requirement:

- MEWAs that provide coverage that consists solely of **excepted benefits** under HIPAA (for example, limited scope dental or vision benefits);
- MEWAs not subject to ERISA, such as **governmental plans or church plans**;
- MEWAs licensed or authorized to operate as **health insurance issuers** in every state where they offer or provide medical care to employees;
- MEWAs that provide coverage to the employees of two or more trades or businesses that share a **common control interest of at least 25 percent** at any time during the plan year;

- MEWAs that provide coverage to the employees of two or more employers due to a **change in control of the businesses** (such as a merger or acquisition) that occurs for a reason other than avoiding the Form M-1 filing, and is temporary in nature; and
- MEWAs that provide coverage to persons (excluding spouses and dependents) who are **not employees or former employees of the plan sponsor** (such as nonemployee members of the board of directors or independent contractors), and the number of these individuals does not exceed one percent of the total number of employees or former employees covered under the arrangement.

## ***Due Dates***

A MEWA must electronically file Form M-1 with the DOL no later than **March 1** following any calendar year in which the MEWA operates.

In addition, a MEWA must submit a Form M-1 for the following events:

Event	Form M-1 Filing Deadline
A MEWA first begins engaging in any activity, such as marketing, soliciting, providing or offering to provide medical care benefits to a participating employer or employees	30 days before the activity
Existing MEWA begins operations in an additional state	30 days before the commencement of operations
Existing MEWA discovers participants are covered in an additional state	Within 30 days
Two or more MEWAs merge	Within 30 days
The number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of employees receiving this coverage on the last day of the previous calendar year.	Within 30 days
The MEWA experiences a material change as described on the Form M-1 instructions (that is, a change to the custodial and financial information reported on the most recent Form M-1)	Within 30 days

If the filing deadline is a Saturday, Sunday or federal holiday, the form must be filed no later than the next business day.

A **one-time extension of the time to file** will automatically be granted if, by the regular Form M-1 due date, a MEWA administrator electronically files a partially completed Form M-1 requesting the extension. The extension will give the administrator an additional **60 days** to file a completed Form M-1.

## Penalties

Failing to comply with the Form M-1 filing requirement may trigger substantial penalties for a MEWA administrator. For penalties assessed after Jan. 23, 2019, the maximum penalty is **\$1,597 per day** of the failure. This maximum penalty amount is adjusted each year for inflation. Although the DOL has a [delinquent filer voluntary compliance program](#) for the Form 5500, it does not have a similar program for the Form M-1.

Also, individuals who knowingly make false statements or representations with respect to the information that must be reported on Form M-1 may be subject to criminal penalties under ERISA.

## DOL'S FILING TIPS

The DOL provides the following [compliance tips](#) for Form M-1 reporting:

- ✓ **A MEWA must file before starting to operate.** A MEWA that offers medical benefits must file a Form M-1 at least 30 days before engaging in any activity including (but not limited to) marketing, soliciting, or providing or offering to provide medical care benefits to a participating employer or employees, including working owners. The filer should indicate a MEWA's first filing by checking the appropriate box on the Form M-1.
- ✓ **Use the correct form.** Use the proper year Form M-1 for annual reports. If the MEWA's plan year starts in the months July through December, select the form for the filing year that corresponds with the last day of the calendar year during which the MEWA offers or provides coverage for medical care. If the MEWA's plan year starts in the months January through June, select the form for the filing year that corresponds with the day of the calendar year during which the MEWA starts to offer or provide coverage for medical care. See the table below for examples:

If a MEWA follows:	For the annual report, use the M-1 Form for:
Calendar year (Jan. 1 – Dec. 31, 2019)	2019
Fiscal year (April 1, 2018 – March 31, 2019)	2018 (Use the 2018 form because the MEWA operated for more than six months in 2018)
Fiscal year (July 1, 2018 – June 30, 2019)	2019 (Use the 2019 form because the MEWA operated for six months in 2019)

- ✓ **Only MEWAs offering benefits for medical care must file.** Only MEWAs that offer or provide medical care benefits must file Form M-1. If a MEWA only offers or provides non-medical benefits (for example, life insurance or disability benefits), it should not file a Form M-1.
- ✓ **MEWAs may have more than one Form M-1 filing in a given year.** Every year, a MEWA must file on Form M-1 no later than March 1 following any calendar year in which the MEWA operates. In addition, a MEWA must submit a Form M-1 registration filing for certain other events, such as when a MEWA begins operations in an additional state.
- ✓ **Indicate the correct M-1 filing type.** The Form M-1 asks the purpose of filing (annual, registration, origination, special). MEWAs will check only “annual” OR “registration,” whichever is applicable. (ECEs are the only entities that will check “origination” or “special.”)
- ✓ **Complete all required information.** A MEWA must provide complete identifying information (such as an EIN) and contact information for all of the MEWA’s sponsors, service providers, and parties with authority or control of the MEWA or its assets.
- ✓ **Include information for every state in which the MEWA operates.** Form M-1 Question 17 includes a chart asking about MEWA operations by state and whether the entity is a health insurer, is fully insured, or purchases stop loss coverage. Filers must complete this question separately for every state in which the MEWA is operating, including providing answers about National Association of Insurance Commissioners (NAIC) codes of insurers or stop loss providers.
- ✓ **Provide accurate insurance information.** Only include the NAIC code for the insurance company providing medical insurance coverage in states where the MEWA is operating. (For example, there is no need to include the NAIC code for a provider of fully insured dental benefits.) For non-fully insured plans that have a stop loss policy, the filer should include the NAIC codes for the stop loss insurer. The DOL would not expect a fully insured MEWA to also have stop loss insurance.
- ✓ **A Form 5500 may also be required.** A MEWA that is also an employee benefit plan under ERISA (such as an AHP) must file both a Form M-1 and a [Form 5500 Annual Return/Report](#). Filers should use the same EIN and name on the Form 5500 and M-1 for a MEWA.
- ✓ **Retain the M-1 confirmation number.** Filers will receive a Form M-1 confirmation number when they complete a filing. Filers should retain this number, because they must provide it on the MEWA’s Form 5500 filing for the same plan year. If the MEWA is not required to file Form M-1 for a year, the administrator should include the confirmation number for its most recently filed Form M-1 on Form 5500.